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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-65

INGLEWOOD RESIDENTS' PROTECTIVE ASSOCIATION, *et al.*,

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal corporation,

Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari.

BURT PINES,
City Attorney,

MILTON H. SHERMAN,
Chief Assistant City Attorney,

RONALD J. EINSTOSS,
Deputy City Attorney,

#1 World Way
Los Angeles, Calif. 90009
(213) 646-3260,

Attorneys for Respondent,
City of Los Angeles.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6525

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Petitioner,

vs.

CITY OF LOS ANGELES, a municipal corporation,

Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari.

Respondent City of Los Angeles prays that the Writ of Certiorari sought by Petitioner not be issued and that the decision and opinion of the Court of Appeal (Second Appellate District) of the State of California remain undisturbed.

JURISDICTION.

A. Petitioner Has Made No Showing That the Instant Case Comes Within the Purview of 28 USC 1257(3).

1. The Validity of a Treaty, United States Statute or State Statute Has Never, at Any Time, Been Drawn Into Question.

Petitioner has not questioned the validity of a treaty or statute of the United States. Petitioner has failed to identify or allege any state statute which may be ". . . repugnant to the Constitution, treaties or laws of the United States. . . ."

Class actions in California are governed by the provisions of Code Civ. Proc., §382[1] and (as to consumer class actions since 1970) Civ. Code, §1781.[2]

Although Petitioner's only grievance is that the instant action cannot be maintained as a class action under California law, the applicable California statutory law has not been drawn into question. Rather, Petitioner claims that the mere denial of class treatment is a denial of due process and equal protection of the law. Therefore, it would appear that Petitioner's only basis for invoking the jurisdiction of this Court, under 28 USC 1257(3), is that such denial infringes upon a ". . . title, right, privilege or immunity . . . claimed under the Constitution, treaties or statutes of . . . the United

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[1]Code Civ. Proc., §382 provides as follows:

"If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

[2]Civ. Code, §1781 provides in pertinent part, as follows:

"(a) Any consumer entitled to bring an action under Section 1780 may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, bring an action on behalf of himself and such other consumers to recover damages or obtain other relief as provided for in Section 1780.

"(b) The court shall permit the suit to be maintained on behalf of all members of the represented class if all of the following conditions exist:

"(1) It is impracticable to bring all members of the class before the court.

"(2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.

"(3) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class.

"(4) The representative plaintiffs will fairly and adequately protect the interests of the class."

States." Thus, Petitioner seeks to raise a Federal question sufficient to hurdle the jurisdictional issue. As will be shown, Petitioner fails to clear this first hurdle.

2. The Only Question Before the California Courts Was the Non-Federal Question of Whether This Action May Proceed as a Class Action.

Petitioner has consistently failed to differentiate between the bases for its various causes of action and the procedural remedy by which it may pursue such actions. While the various causes of action alleged by Petitioner may be founded in part upon Federal law, no decision on the merits of such claims has yet been rendered by a California court in the instant case. As will be shown herein, there was in fact no Federal question presented to or decided by the California court.

Consistently over the years it has been stated by this Honorable Court that it has no power to review local law as applied by local courts. Thus, in *Enterprise Irrig. District v. Farmers Mut. Canal Co.*, 243 U.S. 157, 165, 37 S.Ct. 318, 61 L.Ed. 644, 649 (1917) it was stated:

> "The claim that the court, in disposing of some of the questions, including that of estoppel, misconceived or misapplied the statutory and common law of the state, and thereby infringed the due process and equal protection clauses of the 14th Amendment, requires but brief notice. The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law. (Citations omitted.)"

That it is not the function of the United States Supreme Court to decide local questions has been pointed out in the following cases, among many others: *First Nat. Bank v. Anderson*, 269 U.S. 341, 346, 46 S.Ct. 135, 70 L.Ed. 295, 302 (1926); *American Railway Exp. Co. v. Kentucky*, 273 U.S. 269, 272, 47 S.Ct. 353, 71 L.Ed. 639, 641 (1927); *United Gas Public Service Co. v. Texas*, 303 U.S. 123, 139, 58 S.Ct. 483, 82 L. Ed. 702, 714 (1938).

Not only must a Federal question be properly presented to the state court, but it must appear that the state court's decision of the Federal question was *necessary* to the determination of the case. *Honeyman v. Hanan*, 300 U.S. 14, 18, 57 S.Ct. 350, 81 L.Ed. 476, 479 (1937).

Respondent submits that the California court did not have to decide a Federal question necessary to the determination of this case for the following reasons:

1. The only question presented to the California court was whether or not the instant action may proceed as a class action. Code Civ. Proc., §382, relating to joinder of parties and class suits, is based on the equitable doctrine of virtual representation which rests on considerations of necessity and paramount convenience, and was adopted to prevent a failure of justice. *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 703, 704; *Chance v. Superior Court* (1962) 58 Cal.2d 275, 291; *Weaver v. Pasadena Tournament of Roses* (1948) 32 Cal.2d 833, 837. The decision in the instant case was limited to a matter of procedure under California law.

2. A state may choose the procedure it deems appropriate for the vindication of Federal rights. *Young*

v. Ragen, 337 U.S. 235, 238, 69 S.Ct. 1073, 93 L. Ed. 1333, 1336 (1949). Due regard for the rightful independence of state government requires that procedural matters not foreclosing or affecting Federal rights be maintained. These general principles have long been recognized by this Court as indicated in the following quotation from *Central Vermont R. Co. v. White,* 238 U.S. 507, 511, 35 S.Ct. 865, 59 L.Ed. 1433, 1436 (1915):

> "There can, of course, be no doubt of the general principle that matters respecting the remedy—such as the form of the action, sufficiency of the pleadings, rules of evidence, and the statute of limitations—depend upon the law of the place where the suit is brought."

In *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 185, 94 S.Ct. 2140, 40 L.Ed. 2d 732, 753 (1974) Justice Douglas, in a separate opinion, clearly identifies class actions as "legal remedies." The class action is an "invention of equity" (*Montgomery Ward & Co. v. Langer,* [8th Cir. 1948] 168 F.2d 182, 187) and is governed in the Federal Courts by rules (*i.e.,* Federal Rules Civ. Proc., 23) and in state courts by statutes and rules (*e.g.,* Code Civ. Proc., §382, Civ. Code, §1781). In California, the State Supreme Court has suggested that Federal Rules Civ. Proc., 23 may be utilized by trial courts in resolving the procedural problems facing a court in the trial of a class action. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821. The Federal Courts have held that Rule 23 is a rule of procedure. *Pioche Mines Consolidated, Inc. v. Dolman* (9th Cir. 1964) 333 F.2d 257, 265, cert. denied 380 U.S. 956, 85 S.Ct. 1081, 13 L.Ed. 2d 972; *Harris v. Palm Springs Alpine*

Estates, Inc. (9th Cir. 1964) 329 F.2d 909, 912-913. Similarly, a state determination of the allowability of a class action in specific instances is merely the invocation of a local rule of procedure. This is especially true in California where the Supreme Court of California has not only encouraged innovative procedural devices to expedite the handling of class actions, but has specifically referred the trial courts to Federal Rules Civ. Proc., 23 as a basis for establishing and resolving such procedural problems. *Vasquez v. Superior Court, supra,* 4 Cal.3d at 821.

That state class actions have their genesis in equity and not the Constitution or Federal law is clear from the following statement in 7 Wright & Miller, *Federal Practice and Procedure* (1972), Civil §1751, p. 507:

> "The equity class action practice was incorporated into the *procedural* codes of numerous states and was made applicable to actions at law as a result of the law—equity fusion that typically occurred at the time these codes were adopted." (Emphasis added.)

It was not necessary to reach any Federal question to determine the viability of a class action in this instance, nor was any Federal question in fact decided. Further, other more appropriate means of redress by the class, as individuals, has not been foreclosed by the California court's decision in this case. Appropriate constitutional guaranties have not in any way been thwarted—they merely have not yet reached a point of final adjudication. In such a case this Honorable Court lacks revisory

power over state practice. *Milk Wagon Drivers U. v. Meadowmoor Dairies,* 312 U.S. 287, 297, 61 S.Ct. 552, 85 L.Ed. 836, 843 (1941).

STATEMENT OF THE CASE.

While generally correct, Petitioner's Statement of the Case omits certain significant facts. For this reason, Respondent presents the following in order for this Court to have a complete factual statement.

The instant lawsuit seeks damages for injury to property and person allegedly incurred from jet aircraft operations at Respondent's Los Angeles International Airport. The complaint prays for an amount of $15,000.00 per property and person. In addition to the class, the complaint contains individually named plaintiffs (not affected by the class action ruling) numbering in the hundreds. Within the City of Inglewood (the geographical area generally encompassed within the complaint) are approximately 90,000 persons. Ostensibly, this number of persons comprised the "class." The real properties within the "class" area are as generally diverse as one might expect in a city the size of Inglewood. Such diversity includes size, use, zoning, improvements, age and location. Little need be said concerning the individual physical and emotional differences among some 90,000 persons. Against this factual background, the Court of Appeal of the State of California decided that a class action was inappropriate. The California Supreme Court subsequently denied a hearing.

REASONS FOR REFUSING THE WRIT.

A. Introduction.

Respondent has heretofore demonstrated that Petitioner has failed to show circumstances permitting it to invoke jurisdiction under 28 USC 1257(3).

The following points, keyed to Petitioner's Reasons for Granting the Writ, discuss the reasons for refusing the writ.

B. The Denial of Class Action Treatment in the Instant Case Is Neither a Denial of Constitutional and Civil Rights nor a Denial of Due Process and Equal Protection of the Law.

Petitioner's reason number 1 (Petition, p. 8) presents a somewhat rambling and garbled argument containing misstatements of fact and law. By inference, Petitioner seems to claim that the denial of class action treatment somehow denies the individual members of the "class" access to the courts to seek redress from certain alleged wrongs. Both from a practical and legal standpoint, nothing could be further from the truth.

Experience has shown that literally hundreds of named plaintiffs have instituted lawsuits claiming damages from Respondent because of jet aircraft operations at Los Angeles International Airport.[3] And, the vast

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[3]*See, e.g., Los Angeles Unified School Dist. v. City of Los Angeles,* Los Angeles Superior Ct. Case No. 965,067; *Archdiocese of Los Angeles Education and Welfare Corp. v. City of Los Angeles,* Los Angeles Superior Ct. Case No. 998,331; *Aaron v. City of Los Angeles* (1974) 40 Cal.App.3d 471; *Greater Westchester Homeowners Ass'n v. City of Los Angeles,* 11 Av.

majority of those individually named plaintiffs has obtained recovery. The practicalities of bringing this type of lawsuit certainly have not deterred numerous other individuals from successfully pursuing their legal remedies in the courts of California. In the case of *Aaron, et al. v. City of Los Angeles* (1974) 40 Cal.App.3d 471, a case involving approximately 750 parcels of real property where damages were awarded to 520 property owners in the total amount of $650,000.00, this Respondent sought a Petition for Writ of Certiorari which was denied by the United States Supreme Court (419 U.S. 1122). This Court is therefore well aware that such actions are being and have been successfully pursued in California without resort to class action treatment.

The prayers involved in the instant case do not represent minuscule individual claims for damages, but run into the thousands of dollars per person. The plaintiffs are not small claimants who, but for the procedural device of the class action, would be denied access to the courts. The concerns expressed by Justice Douglas in *Eisen v. Carlisle & Jacquelin, supra,* 417 U.S. 156, 186 concerning small claimants who would go begging for justice without the class action are not present in the instant case.

Cas. 18374 (Cal. Super. Ct. 1970); *Albert, et al. v. City of Los Angeles,* Los Angeles Superior Ct. Case No. C20144; *Derr v. City of Los Angeles,* Los Angeles Superior Ct. Case No. 944,461: *Irwin, et al. v. City of Los Angeles,* Los Angeles Superior Ct. Case No. 985,929; *Munger, et al. v. City of Los Angeles,* Los Angeles Superior Court Case No. 931,315; *Parker, et al. v. City of Los Angeles* (1974) 43 Cal.App.3d 976.

Adequate state safeguards of Constitutional rights are available to individual plaintiffs in the instant case. These include, *inter alia:*

1. California Constitution, Article I, Section 19 (formerly Article I, Section 14), which provides in pertinent part:

   "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owners."

2. Code Civ. Proc. §382 and Civ. Code §1781 which authorize class actions in certain specified instances.

3. Decisions of the California Supreme Court which elaborate on the guidelines for maintaining class actions under specific factual circumstances. As the California Supreme Court stated in *Vasquez v. Superior Court, supra,* 4 Cal.3d 800, 821:

   "If the class action is to prove a useful tool to the litigants and the court, pragmatic procedural devices will be required to simplify the potentially complex litigation while at the same time protecting the rights of all of the parties."

Fairness to the litigants and expediency in serving the judicial process has been the hallmark of the development of class action law in California. This concern for the rights of the parties insures that Constitutional rights of every individual remain inviolate.

Petitioner's reference on page 12 of its Petition to the cases of "*Burbank v. Lockheed,* 411 U.S. 624; *Air*

Transport Assn. v. Crotti, 389 F.Supp. 58, (1975); *American Airlines v. Hempstead,* 272 F.Supp. 266, 398 F2 369 (sic); *Airline Pilots Assn. v. D.O.T.,* 11 Avi 18,251" is confusing and misleading. None of these cases involves a class action. Little more need be said.

Just as the Federal Courts have recognized that whether a class action may be maintained is discretionary with the trial court (see, *e.g., Bermudez v. United States Department of Agriculture* [D.C. Cir. 1973] 490 F.2d 718, 724, cert. den. 414 U.S. 1104, 94 S.Ct. 737, 38 L.Ed. 2d 559; *Carter v. Butz* [3rd Cir. 1973] 479 F.2d 1084, 1089, cert. den. 414 U.S. 1103, 94 S.Ct. 737, 38 L.Ed. 2d 559), so must it be held that the maintenance of class actions in state courts is a matter of state discretion and concern.

C. It Is Not Necessary to Review Griggs v. Allegheny in Connection With Class Action Litigation.

After convoluted argument, Petitioner boldly pronounces that "The limited right of redress articulated by the *Griggs* case no longer satisfies recognized societal needs." (Petition, p. 15.) *Griggs v. Allegheny County,* 369 U.S. 84, 82 S.Ct. 531, 7 L.Ed. 2d 585 (1962) basically held that it was the owner and operator of the airport (as opposed to the airlines or the United States) which was required to compensate the plaintiffs in that case (369 U.S. 84, 89-90).

Griggs does not stand for the proposition (apparently advanced by Petitioner) that inverse condemnation is the sole legal theory upon which a plaintiff allegedly aggrieved by airport operations may sue. Nor does California law purport to limit such plaintiffs to inverse condemnation. In *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, an airport case involving over

700 plaintiffs suing the City of Santa Monica, the California Supreme Court specifically recognized the existence of a nuisance cause of action and very clearly did not foreclose the proper pleading of negligence, zoning violations and theories of dangerous and defective conditions of public property. One is left to wonder what point Petitioner is trying to make.

While not crucial to the issues herein, Respondent finds it necessary to correct Petitioner's misstatement that ". . . the California Appellate Court notes that in 1967 the airlines agreed to fund $300,000,000 in bonds for further expansion of LAX and the necessity for acquisition of 'airspace or air easements or similar interest in land.'" (Petition, p. 14.) The airlines at no time agreed to "fund" these bonds. The true fact, as stated in *City of Los Angeles v. Japan Air Lines Co., Ltd.* (1974) 41 Cal.App.3d 416, 423 is that ". . . each of the airlines executed an amendment to its basic lease whereby it agreed to pay the City such additional landing fees as might from time to time be necessary to service up to $300,000,000 of any bonded indebtedness so incurred by the City." The airlines did not "fund" such bonded indebtedness. Further, the City of Los Angeles has not yet incurred a bonded indebtedness in the total anticipated amount of $300,000,000 through the issuance of Airport Revenue Bonds.

D. There Is No Denial of "Just Compensation" Merely Because a Class Action May Not Be Maintained.

In an argument bordering on the frivolous, Petitioner somehow claims that just compensation is denied by the holding that a class action may not be maintained. How and why this occurs is not demonstrated by Peti-

tioner. California Constitution, Article I, Section 19 guarantees the payment of just compensation when there is a taking or damaging of private property for public use. The California courts have established that just compensation must be paid where there is a taking or damaging of private property by a municipal airport operator. In *Aaron v. City of Los Angeles, supra,* 40 Cal.App.3d 471, 493 it is stated:

> "In summary we hold that the municipal operator of an airport is liable for a taking or damaging of property when the owner of property in the vicinity of the airport can show a measurable reduction in the market value resulting from the operation of the airport in such manner that the noise from aircraft using the airport causes a substantial interference with the use and enjoyment of the property, and the interference is sufficiently direct and peculiar that the owner, if uncompensated, would pay more than his proper share to the public undertaking."

The *Aaron* case, as does the case of *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447 recognizes that land is unique. *Aaron* directs what must be shown in order to establish a claim for just compensation. *San Jose* holds that a case such as the instant one is inappropriate for class action treatment. Neither case forecloses the payment of just compensation when required by the California Constitution or the United States Constitution. Other than the recitation of numerous cases not on point, Petitioner makes no showing of any denial or potential denial of just compensation.

E. The Jurisdictional "Power" of the City of Los Angeles Is Properly Not an Issue Which Has Been Decided Herein, nor Is It Relevant to a Determination of the Class.

Respondent will attempt to respond to this issue raised by Petitioner, but Respondent candidly admits its confusion in attempting to unravel the mysteries of this circuitous argument. Preliminarily, Respondent understands the law to be that the question of the power or right to acquire property as well as the amount of compensation to be paid does not ordinarily involve a Federal right. *Madisonville Traction Co. v. St. Bernard Min. Co.,* 196 U.S. 239, 252, 25 S.Ct. 251, 49 L.Ed. 462, 468 (1905); *Stone v. Southern Illinois & M. Bridge Co.,* 206 U.S. 267, 273, 27 S.Ct. 615, 51 L.Ed. 1057, 1060 (1907). In *Madisonville,* it was stated:

> "Speaking generally, it is for the state, primarily and exclusively, to declare for what public purposes private property within its limits may be taken upon compensation to the owner, as well as to prescribe a mode in which it may be condemned and taken." (196 U.S. at 252.)

Other than certain unsupported conclusions coupled with a reference to some dark "dilemma" (Petition, p. 19), Petitioner fails to connect its arguments coherently with the issue of a class action. Clearly, the *Madisonville* and *Stone* cases, considered in light of the aforementioned California cases (*i.e., Aaron, San Jose, Nestle, Vasquez,* etc.) foreclose the necessity of further discussion of this issue. The question of Respondent's authority or "power" is one to be decided by the California court, if and when the issue is properly presented.

CONCLUSION.

For the reasons stated herein, Respondent respectfully urges that the writ prayed for by Petitioner be denied.

Respectfully submitted,

BURT PINES,
City Attorney,

MILTON N. SHERMAN,
Chief Assistant City Attorney,

RONALD J. EINBODEN,
Deputy City Attorney,

Attorneys for Respondent,
City of Los Angeles.